

AN EXAMINATION

OF THE

*Scheme for Engrafting the Colonial
System of Government upon the
United States Constitution*

BY

FRANCIS A. BROOKS

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Examination of the Scheme for Engrafting the Colonial System of Government upon the Constitution of the United States.

The object of this paper is to give the people of the United States full information as to what has been going on in the island of Luzon for two years past, and to point out to them how and why such a lamentable state of things has come to pass, and who is responsible for it.

I.

President McKinley in his inaugural address, referring to Cuba and our relations with Spain, said, "We want no wars of conquest: we must avoid the temptation of territorial aggression."

On the eleventh day of April, 1898, the President in a message sent to Congress asked for authority —

"To take measures for terminating by forcible intervention the hostilities between the government of Spain and the Cubans . . . and to use the military and naval forces of the United States for that purpose."

On the nineteenth day of April a joint resolution was passed by Congress, declaring it to be the duty of the United States to require Spain to relinquish its authority and government in the island of Cuba, and authorizing the President to use the land and naval forces to accomplish that result, and closing as follows:—

"That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island, except for the pacification thereof, and

asserts its determination, when that is accomplished, to leave the government and control of the island to its people."

Three days later (April 22) the President, without the authority of Congress, proclaimed a blockade of certain Cuban ports ; and on the twenty-fifth day of April he sent a message to Congress recommending a declaration of war against Spain.

On April 24, the day before war was declared by Congress, an interview took place at Singapore between United States Consul-general Pratt and Aguinaldo, in which the latter offered to operate in the Philippine Islands against Spain in conjunction with the United States navy. Pratt thereupon telegraphed to Dewey as follows :—

"Aguinaldo insurgent leader here. Will come Hong Kong arrange with Commodore for general co-operation insurgents Manila if desired. Telegraph."

Dewey replied,—

"Tell Aguinaldo come, soon as possible."

Previously to that Dewey had sent a despatch to Washington from Hong Kong in these words :—

"There is every reason to believe that, with Manila taken or even blockaded, the rest of the islands would fall to the insurgents or ourselves."

On April 26 Aguinaldo left Singapore for Hong Kong, expecting to meet and confer with Dewey at that place.

On April 27 Consul Pratt telegraphed the Secretary of State at Washington as follows :—

"General Aguinaldo gone, my instance, Hong Kong, arrange with Dewey co-operation insurgents, Manila."

Early in 1898 United States Consul Wildman at Hong Kong addressed a letter to Aguinaldo, in which he said :—

"Do not forget that the United States undertook this war for the sole purpose of relieving the Cubans from the cruel-

ties under which they were suffering, and not for the love of conquest or the hope of gain. Whatever the final disposition of the conquered territory may be, you can trust to the United States that justice and honor will control all their dealings with you. The first thing is to throw off the Spanish yoke. Do not let anything interfere with this."

Aguinaldo, with his thirteen staff officers, reached Manila May 19 in a war vessel furnished by Dewey for that purpose, and was received in a very friendly manner by him, and supplied with rifles, field-pieces, and ammunition to be used in fighting against Spain. Aguinaldo proceeded at once to enlist and organize forces for attacking the Spanish forces in the island of Luzon, and his movements were attended with great success.

On that same nineteenth day of May the President issued instructions to the Secretary of War, to be communicated by him to General Merritt, by which that officer, who had been appointed to the command of a military expedition to the Philippines, was directed immediately upon his arrival at the island to make proclamation to the people that the United States was in occupation of the islands, and had established there a military government to which they were required to submit.

These instructions were communicated by Secretary Alger to General Merritt at Washington on May 28, 1898, before which time Aguinaldo had been received by Dewey and supplied with guns and ammunition for assisting the United States in its war with Spain, and Aguinaldo had commenced and already made a good progress in that work.

On June 16 United States Consul Williams at Manila reported to Washington that the Filipinos had already captured four thousand Spanish prisoners, eight field-pieces, and eight thousand rifles.

On that same day Secretary of State Day addressed a letter to Consul-general Pratt, in which he said :—

"The department observes that you informed General Aguinaldo that you had no authority to speak for the United States, and . . . it is assumed that you did not attempt to

commit this government to any alliance with the Philippine insurgents. . . . This government has known the Philippine insurgents only as discontented and rebellious subjects of Spain, and *is not acquainted* with their purposes. While their contest with that power has been a matter of public notoriety, they have neither asked nor received from this government any recognition. The United States, in entering upon the occupation of the islands as the result of its military operations in that quarter, will do so in the exercise of the rights which the state of war confers, and will expect from the inhabitants, without regard to their former attitude toward the Spanish government, that obedience which will be lawfully due from them."

From this letter it appears that the authorities at Washington as early as the 16th of June, 1898, had determined to take military possession and control of the Philippine Islands in the exercise of rights supposed to have been acquired as the result of the success already gained in the war with Spain, without paying any regard whatever to the rights, interests, or wishes of the many thousand Filipinos in the island of Luzon who had been battling with Spain in concert with the United States, and acting in co-operation with Dewey prior to the arrival of any troops sent to his assistance.

When Secretary Day, in his letter of June 16, said he was not acquainted "with the purposes of these rebellious subjects of Spain," it can hardly be supposed that he meant to be understood as saying he was ignorant of the fact that they had been fighting vigorously to gain freedom from Spanish rule, and had met with great success.

On June 21 Consul-general Pratt wrote a letter to the State Department at Washington, in which he said, referring to Aguinaldo :—

"I beg further to state that it was not only on account of the material aid I was confident he could lend that I regarded the co-operation of Aguinaldo as so desirable, but also because, as the recognized leader of the insurgents, he was, I considered, the one best able to direct and influence them, and therefore the one most important for our commander to have under immediate control, both as concerned

the present and future policy of our government in the Philippines, whatever that policy might be. . . . Had it not been arranged for General Aguinaldo thus to co-operate with us, it is more than probable that he would have returned to the islands of his own accord, and undertaken independent operations which might, I fear, have caused us serious embarrassment."

On the twenty-third day of June a so-called Revolutionary civil government was set up and organized by Aguinaldo as President, for the declared purpose of achieving the independence of the Philippine Islands from Spain.

On the sixth day of August, Aguinaldo, as such President, issued an address to foreign governments, in which he stated, among other things, that his revolutionary government was then the ruling power in fifteen provinces of the island of Luzon, and that its capital city, Manila, was then besieged by him; and also that in those fifteen provinces complete order and perfect tranquillity reigned under the administration of civil authorities duly elected for that purpose, and that his so-called revolutionary government was then holding about nine thousand Spaniards as prisoners of war, who were being treated according to the rules of war, and that the said government then had in its service more than thirty thousand men organized as a regular army.

On the 8th of June, 1898, Consul-general Pratt in a speech at Singapore said,—

"I am thankful to have been the means of bringing about the arrangement between General Aguinaldo and Admiral Dewey which has resulted so happily."

On June 27 Dewey reported to Secretary Long as follows:—

"I have given him [Aguinaldo] to understand that I consider insurgents as friends, being opposed to a common enemy. . . . He has gone to attend a meeting of insurgent leaders for the purpose of forming a civil government. Aguinaldo has acted independently of the squadron, but has kept me advised of his progress, which has been wonderful. I have allowed to pass by water recruits, arms, and ammuni-

tion, and to take such Spanish arms and ammunition from the arsenal as he needed. Have advised frequently to conduct the war humanely, which he has done invariably."

On July 4, 1898, General Anderson, then in command of American troops at Manila, addressed a letter to Aguinaldo, as commanding the Philippine forces, in which, among other things, he said:—

"*General*,—I have the honor to inform you that the United States of America, whose land forces I have the honor to command in this vicinity, . . . has entire sympathy and most friendly sentiments for the native people of the Philippine Islands.

"For these reasons I desire to have the most amicable relations with you, and to have you and your people co-operate with us in military operations against the Spanish forces."

On July 6 General Anderson in a letter to Aguinaldo said,—

"It must be apparent to you that we do not intend to remain here inactive, but to move promptly against our common enemy."

On July 17 Major Jones, quartermaster, addressed a letter to Aguinaldo, by order of General Anderson, asking for assistance of the Filipinos in obtaining supplies for the troops, in which he said:—

"We find so far that the native population are not willing to give us this assistance as promptly as required. But we must have, and, if necessary, we will be compelled to . . . seize, what we may need. We would regret very much to do this, as we are here to befriend the Filipinos. . . .

"General Anderson wishes you to inform your people that we are here for their good, and that they must supply us with labor and material at the current market prices."

On July 23 General Anderson in a letter to Aguinaldo said:—

"When I came here, three weeks ago, I requested your Excellency to give what assistance you could to procure

means of transportation for the American army, as it was to fight in the cause of your people. So far we have received no response."

General Whittier, as a witness for the United States before the Peace Commission, when asked "whether the Filipinos were [had been] of material assistance to us," replied, "Very great."

To the question, "Do you think he had as many as eight thousand men before the surrender?" he answered, "Yes, sir: the environment of the city took a great many men." He said: "Aguinaldo's headquarters are at Malolos, twenty-three miles up the railroad. His troops control all the settled parts of the island [Luzon] except Masulo, as well as much of the southern country." He said he meant by the "southern country" those islands below (*i.e.*, below Luzon).

Rear-Admiral Bradford of the United States Navy, on examination as a witness before the Peace Commission, on being asked by Commissioner Frye "what kind of a nation, in the eyes of the world, we would appear to be to surrender Aguinaldo and his insurgents to Spain to be dealt with as they please," answered, "We become responsible for everything he has done: *he is our ally*, and we are bound to protect him."

II.

Although the war with Spain was begun for the purpose of driving the Spaniards out of Cuba, and that alone, yet, after Dewey's great success in destroying the Spanish fleet in Manila Bay, the President seems to have *forgotten* the statement made in his inaugural message, that "we want no wars of conquest, we must avoid the temptation of territorial aggression."

In the language of ex-Secretary John Sherman, "That victory [of Dewey in destroying the Spanish fleet]... altered the plans of the President or made him a convert to what he previously had opposed; namely, any extended sovereignty over the Spanish possessions. I had followed

the President in attacking the Spanish. He then changed his policy, and did not consult me; and I resigned from his cabinet."

The President's change of purpose in this respect is apparent from the letter of Secretary Day of June 16 to Consul Pratt, above quoted, in which was announced the intention of the United States to "enter upon the occupation of the islands as the result of its military operations in that quarter, . . . in the exercise of the rights which the state of war confers," meaning thereby a right of conquest.

The first American troops sent to Manila under General Anderson arrived there June 30, 1898. General Aguinaldo was at that time in military occupation and control of everything on the land side of Manila between the Navy Yard gates and the Spanish line of defence.

Many letters of a friendly character passed between General Anderson and Aguinaldo during the month of July, in which Aguinaldo was addressed as the "Commanding General of the Philippine Forces."

On July 21, 1898, General Anderson wrote as follows to Aguinaldo:—

"*General*,— I have the honor to request that passes and such other assistance as practicable be given to the bearer, Lieutenant F. J. Bryan and party, who are making a reconnaissance of the surrounding country.

"Thanking you for assistance given on previous occasions, I remain, with great respect,

"Your obedient servant,

"THOMAS M. ANDERSON,

"*Brig.-Gen. U. S. V. Commanding.*"

General Merritt arrived at Manila with troops July 25, 1898. That city was then besieged by Aguinaldo's forces numbering twelve or thirteen thousand men, and was defended by a Spanish garrison of a nearly equal number. Aguinaldo's forces held certain advanced positions which Merritt wanted to occupy with his troops; and Aguinaldo was prevailed upon to give them up to him, and to take his own men to a less favorable position in the rear.

Such being the situation at Manila the last of July and first of August, 1898, General Merritt telegraphed to the War Department at Washington for instructions *whether or not he should treat the insurgent Filipinos as enemies of the United States*. He was instructed by the President "to *permit no joint occupation with the insurgents.*"

In September, 1899, Aguinaldo published his own version of the relations which had existed between himself and the United States prior to the surrender of Manila; and Admiral Dewey, in a letter to Senator Lodge referring to that publication, said, "I never treated him [Aguinaldo] as an ally except to make use of him and the soldiers to assist me in my operations against the Spaniards."

Dewey could use Aguinaldo as a tool, but could not recognize him as an ally in the war against Spain, though he furnished him with weapons to be used against the "common enemy"; and they were so used in the siege of Manila and elsewhere by the Filipino forces before any American troops had arrived there.

III.

Spanish War ended by Protocol Aug. 12, 1898.

On the 12th of August, 1898, hostilities between the United States and Spain were suspended by the protocol of that date signed at Washington. That protocol not only operated a suspension of hostilities, but made it impossible for either party afterward to gain any advantage whatever by means of war, even though it were accomplished before the existence of the protocol was made known to the combatants.

The city of Manila at that time had not been attacked, and was still held by a Spanish garrison.

Contents of the Protocol.

By the first and second articles of that protocol it was provided that Spain should relinquish her claim to Cuba and

cede to the United States Porto Rico and all her other West India Islands, and an island in the Ladrones, and evacuate those islands at once.

The third article provided that the United States was to "occupy and hold the city, bay, and harbor of Manila *pending the conclusion of a treaty of peace* which shall determine the control, disposition, and government of the Philippines."

By the fifth article an equal number of Commissioners were to be appointed by each party to meet at Paris, not later than October 1, to negotiate and conclude a treaty of peace.

The sixth article provided for the suspension of hostilities between the two countries upon the conclusion and signing of the protocol.

Peace Commissioners were duly appointed under the protocol, five by each party, who met at Paris in joint session on the first day of October, 1898, agreeably to the protocol.

On the next day, August 13, Manila was attacked by General Merritt, and on August 14 was surrendered to him, and the Spanish army defending it made prisoners. After that surrender Spain had no armed forces in the island of Luzon.

On the twenty-ninth day of August, 1898, the Spanish government applied to Secretary Day at Washington, through the French ambassador, and requested that the Spanish troops taken at Manila and held as prisoners of war by the United States might be placed at the disposal of Spain, to be used by her against the insurgent Filipinos.

Assistant Secretary Moore replied to the request by stating that it could not be expected that the United States would even consider such a proposition, "*in view of the fact that for some time before the surrender of Manila the Spanish forces in that city were besieged by the insurgents by land, while the port was blockaded by the forces of the United States by sea.*"

IV.

From the facts above stated, it appears that the United States, in going to war with Spain, had declared its purpose to be the relief of suffering and distress in Cuba, and that alone, and had expressly disclaimed, through President McKinley, any intention of acquiring thereby any territory (to do so, the President said, would be "criminal aggression"; and for that reason it was not to be thought of); and that Congress, by joint resolution passed April 19, 1898, had declared that the United States disclaimed "any disposition or intention to exercise sovereignty, jurisdiction, or control" over the island of Cuba except for its pacification, and determined, when that was accomplished, "to leave the government and control" of that island to its people;

That on April 24 Dewey, then at Hong Kong, got orders to proceed to the Philippine Islands at once, and capture or destroy the Spanish fleet;

That on the same day and before war was declared against Spain Consul Pratt at Singapore had a conference with Aguinaldo, and took measures for bringing Aguinaldo and Dewey together for co-operation in an attack upon Spain in the Philippine Islands; that Aguinaldo was taken to Manila for that purpose by Dewey, where he arrived on the 19th of May, and entered upon the work as planned; that he there gathered a large army of Filipinos, attacked and defeated Spanish troops in numerous engagements, captured several thousand Spanish prisoners, surrounded the city of Manila on the land side and laid siege to it before any American troops had arrived there, and contributed very largely to the success of the attack on Manila made Aug. 13, 1898, which resulted in the surrender of that city to General Merritt on Aug. 14, 1898; and that the war against Spain was practically brought to an end by the protocol of Aug. 12, 1898;

That through the French ambassador Spain had asked the President for terms of peace as early as July 26, 1898, and terms of peace had been offered to and accepted by her

and put in writing and signed by both parties on the twelfth day of August, by which Spain had agreed to relinquish all claim to Cuba and to evacuate that island immediately, also to cede Porto Rico and her other West India Islands to the United States ;

That each party was to appoint five Commissioners, of their own selection, to negotiate and conclude a treaty which was to "determine the control, disposition, and government of the Philippines," and that hostilities were to be suspended forthwith ;

That, after the war between the United States and Spain had been practically terminated by the protocol, Spain asked that the United States would allow the troops taken prisoners at the capture of Manila to be employed by her in fighting the insurgent Filipinos, and had been told that such a proposal could not be considered for the reason that the United States had been assisted by these same insurgents in taking Manila.

V.

Within twenty-four hours after that protocol was signed, the President seems to have been beset with the "temptation of territorial aggression," and to have yielded to it. On Aug. 13, 1898, he opened communication, through the War Department, with Admiral Dewey, to gain information respecting the Philippine Islands, their desirability, population, coal and other mineral deposits, and asked "*which of them would be the most advantageous in a naval and commercial sense.*"

Appendix, Bureau of Navigation Report, p. 122.

On Aug. 29, 1898, Dewey telegraphed to Secretary Long as follows : —

"Luzon is in almost all respects the most desirable of these islands, and therefore the one to retain. . . . The population of Luzon is reported to be something over 3,000,000, mostly natives. These are gentle, docile, and under

just laws, and with the benefits of popular education would soon make good citizens."

On September 18 the American Commissioners left for Paris. Senator Frye, one of the Commissioners, after returning from Paris, in reply to a question put to him by Senator Vest, in the Senate Chamber said :—

"The instructions of the President, when we started out, were to take Luzon."

Again, Commissioner Frye is reported to have stated to his brother senators in the Senate Chamber that the American Commissioners

"at Paris had regarded the Filipinos as subjects of Spain ; that Spain had lost in the conflict of war, and therefore that the United States had a perfect right, according to the law of nations, to acquire any part of her possessions or people in adjusting the balances after the war was over."

General Merritt, when examined as a witness before the Peace Commission, gave evidence in answer to interrogatories as follows :—

Question by Chairman Day.—"I would like to ask about Admiral Dewey's views. He selects the island of Luzon as the one to be obtained. Do you understand that that is Admiral Dewey's view?"

Answer.—"I understand the question was asked from Washington, *If we took but one island, which is the best to seize upon?*"

Question.—"Do you know, aside from that question, what Admiral Dewey's view is as to taking one island or all the islands?"

Answer.—"I do not. I am inclined to believe, however, that he is in favor of taking the entire archipelago ; but I would not so state it." . . .

"He told me that reply was to a question from Washington asking, *If we retained only one island, which is the better one to retain?*"

Question.—"That was the question in June?"

Answer.—"I think he said his telegram in June referred

to the capacity of the natives to govern themselves, as compared with the Cubans."

Chairman.—"Suppose the United States should acquire even the island of Luzon and set up there its own government, do you think Aguinaldo and his followers would submit to it?"

General Merritt.—"On the island of Luzon alone?"

Question.—"Yes, taking that now under consideration, only."

General Merritt answered, "Only with the understanding that eventually it should be restored to the Filipinos in the event of the United States vacating."

Question by Mr. Davis.—"Suppose the United States, by virtue of a treaty with Spain, should take Luzon, all the Philippines, or a part, . . . paying no attention to the insurgents, how would that be taken by Aguinaldo?"

General Merritt.—"I think Aguinaldo and his immediate followers would resist it; but whether he could resist to any extent I do not know, because his forces are divided." . . .

Question by Chairman.—"What they desire is a government for their benefit, maintained and paid for by us?"

General Merritt.—"Yes, sir."

After the protocol and before the date of the treaty of peace the island of Luzon, except the city of Manila, its suburbs, bay, and harbor, was in possession and control of the insurgent Filipinos, commanded by Aguinaldo, who was also the head of a *de facto* civil government, with a Congress in session at Malolos. In other words, the civil authority of Spain in the island of Luzon had been superseded by that of Aguinaldo and a Congress in session at Malolos.

It was under these circumstances that President McKinley on the thirty-first day of October, 1898, demanded of Spain a cession to the United States of all the Philippine Islands.

When that demand was laid before the Joint Commission for a cession by Spain of all the Philippine Islands to the United States, the Spanish Commissioners replied by saying that such a demand was not consistent with the terms of the protocol, as understood by them; that the protocol did not purport to require Spain to yield up its rights to those islands, unless upon terms satisfactory to the mem-

bers of the entire Commission, including, of course, those representing Spain; that no such claim as that had been made by the United States during the negotiations which had preceded the adoption of the protocol; and that the temporary occupation of Manila by the United States pending the conclusion of a treaty of peace, agreeably to the third article of the protocol, had been conceded and consented to by Spain in order to afford a guaranty to the United States that Spain would keep and perform her part of the protocol agreement, but not as an admission that the United States then had acquired any right to the Philippine Islands, or as compromising in any way the right of Spain in those islands.

For those reasons Spain firmly refused to yield to this demand, and proposed a resort to arbitration as a mode of determining the true interpretation of the protocol in that respect. • The American Commissioners refused to entertain the proposal of arbitration, but at the same time stated that the United States would pay to Spain the sum of \$20,000,000 for a cession by her of all the Philippine Islands rather than let the negotiation for peace wholly fail, meaning thereby, as was understood by Spain, that, unless she should yield and make the cession proposed, the United States would resume hostilities, and would acquire the islands as by conquest in war.

After submitting this ultimatum of the United States to the Spanish authorities at Madrid, the Spanish Commissioners finally yielded, and said: —

“The government of her Majesty, moved by lofty reasons of patriotism and humanity, will not assume the responsibility of again bringing upon Spain all the horrors of war. In order to avoid them, it resigns itself to the painful strait of submitting to the law of the victor, however harsh it may be; and, as Spain lacks material means to defend the rights she believes are hers, having recorded them, she accepts the only terms the United States offers her for the concluding of the treaty of peace.”

Spain was thus persuaded, by the President, to sell out to

the United States her interest in the Philippine Islands, whatever that might be; and thereupon a treaty was signed on the tenth day of December, 1898, at Paris, the third article of which provides that "Spain cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line," the boundary lines of which, defined by certain parallels of latitude and longitude, include a very much larger area of ocean than of land.

By the ninth article of the treaty, it is also provided that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress."

Such was the ruffianly argument employed by the President or his agents in persuading Spain to turn over to the United States whatever rights and interests she then had in the Philippine Islands, rather than have them taken from her by force; and, as a matter of course, it proved successful.

VI.

Relying upon the title to sovereignty over the people of the Philippines thus acquired through the cession by Spain, the President, on the twenty-first day of December, 1898, gave instructions through the War Department to General Otis, by which the latter was directed to publish and proclaim to the inhabitants of the Philippine Islands, among other things, the matter following: "that the United States had succeeded to the sovereignty of Spain in severing the former political relations of the inhabitants and in establishing a new political power" over them, meaning thereby in substituting the sovereignty of the United States over them in place of that formerly belonging to Spain; also, that,

"as the result of the victories of the American arms, the future control, disposition, and government of the Philippine Islands are ceded to the United States, and that in fulfilment of the rights of sovereignty thus acquired . . . the

actual occupation and administration of the entire group of the Philippine Islands becomes . . . necessary, and the military government heretofore maintained by the United States in the city, harbor, and bay of Manila, is to be extended . . . to the whole of the ceded territory."

A copy of these instructions of the President to General Otis were sent by him to General Miller, in command of United States troops at Iloilo, in the island of Panay, and there published on the third day of January, 1899.

General Otis made proclamation of them at Manila the next day, January 4; but in his proclamation he omitted the statement that the Philippine Islands had been conquered by the United States, as also the statement that the United States had succeeded to the sovereignty of Spain.

This very fact probably served only to increase the excitement which it was intended to allay.

In taking that course, the President evidently proceeded upon the theory and belief that the Filipino insurgents were still subjects of Spain, and as such subjects were bound by the treaty of Dec. 10, 1898, notwithstanding the fact that soon after the nineteenth day of May, 1898, these insurgents began and carried on a war against Spain in the island of Luzon for obtaining their independence, in which they had been successful, and had been recognized by the President as independent of Spain; and, notwithstanding also the further fact, that Aguinaldo had set up and put in operation in Luzon during the month of June, 1898, a *de facto* civil government, which was there represented by a Congress and by persons holding civil offices under it in the inhabited portions of the island of Luzon, and was supported by an army consisting of upwards of 13,000 men, and that said army at and after the surrender of Manila occupied and held in military possession and control the entire island of Luzon, excepting the city and suburbs of Manila, so that Spain had no sovereignty in that island which she could exercise, much less transfer to any other government without consent of the people concerned.

The President himself has stated, more than once, in speeches made by him, that the Spanish insurgents had been emancipated from Spanish rule, and that the United States had emancipated them, meaning, we presume, the insurgents inhabiting the island of Luzon, to which island only this paper relates.

These statements do not seem quite consistent with the idea that these insurgents still remained subjects of Spain after their emancipation had been accomplished, either by the United States or themselves or both.

The President might perhaps attempt to justify himself for ignoring Aguinaldo and his supporters, because they were engaged in a war of insurrection and were not entitled to recognition as belligerents, even to the extent of enabling them to gain independence of Spain.

In anticipation of some such excuse for the President's treatment of Aguinaldo and his followers, we refer to an opinion of the Hon. J. S. Black as Attorney-General of the United States (9 Opinions Attorneys-Gen. 140), where he said :—

“A revolutionary party, like a foreign belligerent power, is supreme over the country it conquers, as far as and as long as its arms can carry and maintain it. Vattel (Book III., chap. xviii., sect. 293) says, what all writers on the subject assent to, that the two parties to a civil war are to be regarded for the time as distinct political societies, and stand in the same predicament as two belligerent nations. They are entitled, one as much as the other, to the respect of foreigners who deal with them or meet them on sea or land.

“Each of them is deemed by us to be a belligerent nation, having, so far as concerns us, the sovereign rights of war, and entitled to be respected in the exercise of those rights. These rules of public law are recognized and enforced by our neutrality laws and those of England. It is a crime for our citizens to take part on either side of a civil war, as much as it is to aid one nation in fighting another. All the nations of the earth have acknowledged this doctrine. It was never denied during our Revolutionary War with Great

Britain, nor during the civil contest between Spain and her American colonies.

“It has been doubted whether a mere body of rebellious men can thrust itself among the family of nations, and claim all the rights of a separate power *on the high seas*, without some sort of recognition from foreign governments; but there is no authority, even for a doubt, about the right of the parties to a civil war to conduct it, with all the incidents of lawful war, within the territory to which they both belong.”

If, as claimed and understood by Aguinaldo, the relation between him and the United States in the Spanish War was in the nature of an alliance, he should have been consulted by the United States in making terms of peace; and the failure to do this was not only a breach of good faith but was in violation of recognized rules of international law.

Chancellor Kent in his Commentaries, vol. i. p. 167, says:—

“It is an acknowledged rule of international law that the principal party in whose name the war is made cannot justly make peace without including these defensive allies in the pacification who have afforded assistance, though they may not have acted as principals; for it would be faithless and cruel for the principal in the war to leave his weaker ally to the full force of the enemy’s resentment.”

In Halleck’s International Law (1st ed. p. 850) that author says:—

“Associations and alliances in war . . . oblige the parties, as a general rule, to treat in concert. . . . To determine in what cases an associate in the war may detach himself from the alliance, and make his own separate and particular peace, is a question of difficult solution.”

VII.

It is not now claimed that any conquest of the Philippine Islands had been made by the United States prior to the protocol of Aug. 12, 1898. For that reason the President’s assertion of sovereignty over the people of those islands, in

instructions given by him to General Otis, Dec. 21, 1898, must have been based upon the cession of Spain as set forth in the third article of the treaty.

There are several reasons why the United States did not, by the treaty cession, gain any right of sovereignty over the inhabitants of the island of Luzon.

Firstly, Spain herself at that time had no sovereignty over them, and therefore could convey none. No portion of that island was in the possession or subject to the rule of Spain at any time after Aug. 14, 1898; and, where there is no right of territorial sovereignty, there can be none of personal sovereignty.

Secondly, even where territory is held by a country the inhabitants of which are in a state of peace, and is conveyed away by the sovereign, such conveyance does not carry with it the allegiance of the subjects unless they assent to the change of masters. Allegiance alone is not a vendible commodity.

In a treatise on International Law, by Sir Sherston Baker, recently published (Boston, Little, Brown & Co.), at page 61, that author says:—

“In modern times sales and transfers of national territory to another power can only be made by treaty or some solemn act of the sovereign authority of the State. And such transfers of territory do not include the allegiance of its inhabitants without their consent, express or implied.”

At page 355, the same author says:—

“The rule of public law with respect to the allegiance of the inhabitants of a conquered territory is, therefore, no longer to be interpreted as meaning that it is absolutely and unconditionally acquired by conquest, or transferred and handed over by treaty as a thing assignable by contract and without the assent of the subject.”

“On the contrary, the express or implied assent of the subject is now regarded as essential to a complete new allegiance.”

The same doctrine is stated by Mr. Halleck in his treatise on International Law, vol. ii. p. 473.

We are aware it is claimed that the Supreme Court in the case of *Cross v. Harrison*, 16 How. 164, countenances the President in his claim of sovereignty acquired by the cession made by Spain in this treaty. We think it is not so.

The facts of that case were materially different from those now under consideration. The decision in that case was governed by international law, based upon the exercise of rights acquired by conquest in war, and during the progress of the war or before its termination. No questions of American constitutional law were raised in that case.

It is true that by the rules of international law the inhabitants of a conquered country are subjected temporarily to the military rule of the conqueror, since otherwise they would be under no government whatever.

But the President of the United States in taking military possession of the island of Luzon before the treaty was ratified and while that island, with the exception of the city, bay, and harbor of Manila, was in the actual possession of a *de facto* revolutionary government established by Aguinaldo, was not carrying on war with Spain, but was attempting the conquest of a friendly people.

In Halleck's *International Law*, first edition, p. 779, bottom, that author, referring to the rights acquired by conquest in war of enemy's territory, states:—

“But so much of such territory as refuses to submit or to recognize the authority of the conqueror, and is not forcibly occupied by him, cannot be regarded as under his control or within the limits of his conquest; and he, therefore, cannot pretend to govern it or to claim the temporary allegiance of its inhabitants, or in any way to direct or restrict its intercourse with neutrals. . . . The government of the conqueror being *de facto* and not *de jure*, it must always rest upon the fact of *possession*, which is adverse to the former sovereign, and therefore can never be inferred or presumed. In other words, the rights of the conqueror are those of possession, and not of title; and, whenever brought in question, they must be proved, and cannot be presumed. Not only must the possession be

actually acquired, but it must be *maintained*. The moment it is lost, the rights of military occupation over it are also lost."

According to Mr. Halleck the United States at the time of the protocol had gained no right of military occupation of the island of Luzon by conquest, outside of the city, bay, and harbor of Manila.

VIII.

But if, we are wrong in saying that Spain was not capable in December, 1898, of conveying to the United States sovereignty over the island of Luzon or its inhabitants, we feel quite confident that the United States could not acquire such sovereignty by purchase, and thereafter assert the same over the people against their will or without their consent.

To do this or attempt to do it, and to rule the people so acquired as colonists without voice in the government, would be clearly contrary to the principles laid down by our forefathers in the Declaration of Independence, and to the views entertained by the framers of the Constitution and expressed in that instrument by them.

It is true that this Constitution was established by them for the people of the United States of America, and to secure the blessings of liberty to them and to their posterity; but it cannot be supposed that they would have recommended to their posterity to adopt the colonial system of government for themselves or to attempt its imposition upon a foreign people, even though it was to be administered by so immaculate, benevolent, and worthy a person as President McKinley is alleged to be.

It is now, as we believe, conceded by the President and his supporters that the inhabitants of the Philippine Islands, if acquired by treaty with Spain, are not to be admitted into the union of States with the right of becoming citizens of the United States, either at present or at any future time,

but are to be held as colonists, and dealt with as such under legislation to be passed by Congress without regard to any restrictions contained in the Constitution.

In *Scott v. Sanford*, 19 How. 397, the court remarked as follows :—

“A power in the general government to obtain and hold colonies and dependent territories over which they [the Congress] might legislate without restriction *would be inconsistent with its own existence* in its present *form*.”

In the case of *Pollard v. Hagan*, 3 How. 212, 223, the court said :—

“Every nation acquiring territory by treaty or otherwise must hold it subject to the Constitution and laws of its own government.” “It cannot be admitted that the King of Spain could by treaty or otherwise impart to the United States any of his royal prerogatives ; and much less can it be admitted that the United States have capacity to receive or power to exercise them.”

In *Shively v. Bowlby*, 152 U. S. 1, the Supreme Court expressed itself as follows :—

“The territories acquired by Congress, whether by deed of cession from the original States” (meaning the Northwest Territory) “or by treaty with a foreign country, are held with the object, as soon as their population and condition justify it, of being admitted into the Union as States, upon an equal footing with the original States in all respects.”

In Cooley’s Principles of Constitutional Law, p. 170, that writer says,—

“When territory is acquired, the right to suffer States to be formed therefrom and to receive them into the Union must follow of course, . . . because it would be inconsistent with institutions, founded on the fundamental idea of self-government, that the federal government should retain territory under its own imperial rule and deny the people the customary local institutions.”

John C. Calhoun, referring to the President's treaty-making power (vol. i. p. 204 of his works), said,—

“It [the President's treaty power] can enter into no stipulation calculated to change the character of the government, or to do that which can only be done by the constitution-making power, or which is inconsistent with the nature and structure of the government, or the object for which it is framed.”

IX.

It is obvious that, if these decisions of the Supreme Court correctly interpreted the Constitution, it would be impossible, consistently with that instrument, to empower Congress by a treaty to determine the “civil rights and political status” of the inhabitants of a territory to be acquired by virtue of that treaty.

The American Commissioners (all, except one, lawyers) must have known this; yet they did not hesitate to insert in the ninth article of the treaty a clause providing that

“The civil rights and political status of the native inhabitants of the territory thereby ceded to the United States shall be determined by the Congress.”

This was what we call an attempt by the President or his agents to engraft the colonial system of government upon the Constitution of the United States through a treaty framed for that purpose.

If such an attempt could be successful, it would enable the President, under the pretence of a treaty, to abrogate the Constitution to the extent of conferring upon our republic powers possessed only by monarchies.

If it was not within the lawful exercise of the treaty-making power of the President to introduce such a clause into this treaty, the ratification by the Senate cannot alter the case: it must remain nugatory and void, as not warranted by the Constitution.

In answer to this position, it will be said that the third

section of article four of the Constitution gives to Congress all necessary power for enabling it to hold and govern the Philippine Islands as colonies.

This section reads as follows :—

“The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States.”

Upon this question we refer to opinions of the United States Supreme Court in the cases below named.

In the case of *Scott v. Sandford*, 19 How. 393, the Supreme Court decided that, while it was within the power of the United States government to acquire territory either by treaty or conquest for the purpose of having the same formed into new States to be admitted into the Union, it could not lawfully acquire territory for the purpose of holding and governing the same or its inhabitants by Congress as colonies, unrestrained by provisions in the Constitution relating to the powers of Congress.

It was likewise decided in said case of *Scott v. Sandford* that the territorial clause above quoted applies only to territory which belonged to the United States or some of the States at the time of the formation of the Constitution, and did not include Territory acquired by it subsequently. In that case, the Court, referring to Clause 2 of Section 3 of Article 4 of the Constitution, remarked as follows :—

“It was to transfer to the new government the property then held in common by the States, and to give to that government power to apply it to the objects for which it had been destined by mutual agreement among the States before their league was dissolved. It applied only to the property which the States held in common at that time, and has no reference whatever to any territory or other property which the new sovereignty might afterward itself acquire.

“The language used in the clause, the arrangement and combination of the powers, and the somewhat unusual phraseology it uses, when it speaks of the political power to be exercised in the government of the territory, all indicate

the design and meaning of the clause to be such as we have mentioned. It does not speak of any Territory nor of Territories, but uses language which, according to its legitimate meaning, points to a particular thing. The power is given in relation only to the territory of the United States; that is, to a Territory then in existence, and then known or claimed as the territory of the United States."

The Territory there referred to was known as the Northwest Territory, out of which were made the States of Ohio, Indiana, Illinois, Wisconsin, and Michigan.

In the case of *United States v. Kagama*, 118 U. S. 375, the Supreme Court, referring to this same clause, remarked as follows:—

"This power of Congress to organize territorial governments and make laws for their inhabitants arises not so much from the clause in the Constitution in regard to disposing of and making rules and regulations concerning the territory and other property of the United States as from the ownership of the country in which the territories are, and the right of exclusive sovereignty which must exist in the national government, and can be found nowhere else."

In *United States v. Gratiot*, 14 Peters, 527, the Supreme Court, referring to the word "territory" in Section 3 of Article 4 of the Constitution, said:—

"The term 'territory,' as here used, is merely descriptive of one kind of property, and is equivalent to the word 'lands'; and Congress has the same power over it as over any other property belonging to the United States."

These decisions of the Supreme Court show that the framers of the Constitution used the word "territory" in Section 3 of Article 4 in its property signification only, and that it should not now be construed as extending to the political rights of any persons whomsoever occupying such property who were not also at the same time inhabitants of the United States.

X.

The war between the United States and Spain was practically terminated by the protocol of Aug. 12, 1898. It was formally terminated on the tenth day of December, 1898, at which time the United States had acquired no right or title whatever to any part of the island of Luzon even as against Spain, as Spain was not in possession or control of that island or any part of it at any time after Aug. 14, 1898, but had been divested of such possession by the joint efforts of the United States and the revolutionary party there formed and organized under Aguinaldo as commander-in-chief of an army, and head of a civil government who had been acting in concert with the United States in its war against Spain, and had thereby gained actual possession and control of that island, excepting the city of Manila, by making a war of independence in behalf of his own countrymen against Spain, in which war he had been successful.

Such was the situation when President McKinley on the tenth day of December, 1898, made a bargain with Spain in behalf of the United States, for the purchase of whatever right she then had to obtain control of the people of that island; and he undertook to assert such right through General Otis on the fourth day of January, 1899, as set forth in a proclamation published at Manila on that day, and has been making war in that island for that purpose ever since the fourth day of February, 1899, without any proper authority for doing so, and has overcome and scattered the armed forces of Aguinaldo and put him to flight, and is at this time seeking to kill him or capture and make him a prisoner. In this way over ten thousand Filipinos have already been put to death in fighting to maintain the independence they had achieved from Spain, of which our President seeks to deprive them, upon the ground that he is enforcing a right acquired from Spain by the treaty of Dec. 10, 1898.

XI.

Notwithstanding the admission of the President, that by reason of the protocol, and prior to the ratification of the treaty, the United States could exercise no authority outside the city, bay, and harbor of Manila, yet he assumed to do so, in the island of Panay, by ordering General Miller on the second day of January, 1899, to attack and take the city of Iloilo, if not permitted to occupy it. Iloilo was then in the possession of the insurgent forces of Aguinaldo. General Miller called for its surrender early in January, and was refused. General Miller's troops were then on board transports, and were not allowed to land. This state of things continued till February 11, when the city was bombarded and captured by General Miller after its surrender had been demanded by him for more than a month, thus showing that hostilities against the Filipinos were begun by the United States at Iloilo early in January, 1899, before any occurred in the island of Luzon, and before the ratification by the United States of the treaty of peace.

The statement of the President in his speech at Pittsburg above quoted, that Spain (after the surrender of Manila) "was still in possession of the remainder of the archipelago," meaning thereby to include the island of Luzon outside of Manila, is notoriously untrue. That statement is also inconsistent with the extract from his message of December, 1899, above quoted, in which he said "that the insurgents under Aguinaldo had been liberated from Spain by the United States before the capture of Manila."

The President's demand of all the Philippine Islands from Spain on the thirty-first day of October, 1898, under a threat of resuming the war for purposes of conquest if his demand was refused, was not only in violation of the protocol: it was also, as now appears, intended to deprive the insurgent Filipinos of the independence they had gained in the war with Spain, in order to subject them to the absolute rule of a more benignant master against their will.

But for reasons above stated no such transfer of sovereignty from Spain to the United States over the island of Luzon was then legally possible.

Spain was not at that time in possession and exercise of sovereignty over that island and its inhabitants, and therefore she could impart to the United States nothing of that description.

XII.

Situation at Luzon between Signature of Treaty and its Ratification.

On this subject we can quote the President himself. In a speech made by him at Pittsburg, Pa., in August, 1899, he said :—

“Until the treaty was ratified, we had no authority beyond Manila city, bay, and harbor. We then had no other title to defend, no authority beyond that to maintain. . . . Spain had sued for peace. The truce and treaty were not concluded.”

He there admitted that the United States was without any authority whatever in the Philippine Islands except in the city, bay, and harbor of Manila.

The fact is that the United States forces and those of Aguinaldo were at that time encamped or stationed in close proximity near Manila, with outposts separated only by a bridge spanning a narrow stream, and in dispute as to the rightful possession of the places where their respective sentinels were posted. It was under these circumstances that the instructions given to General Otis by the President to enter upon and take military possession of the islands were proclaimed to the “*people of the Philippines*.”

On the day following (Jan. 5, 1889) a counter-proclamation or manifesto was issued by Aguinaldo, in which he protested most earnestly against what he styled “this intrusion of the United States government in the administration of these islands.”

General Miller had before then been ordered by the President to attack and take from the insurgents the city of Iloilo, in the island of Panay, if not permitted by them to occupy it, and was then at Iloilo with troops engaged in carrying out that order. It thus appears that the President was doing at Manila the very thing which he afterward said he then had no authority for doing.

The city of Iloilo was soon afterward bombarded and taken by General Miller; and on the fourth day of February, 1899, two days before the ratification of the treaty by the United States, the opposing forces were brought into collision, in which several hundred were killed, and ever since that day the hostilities, then begun between the United States forces and the Filipinos, have been continued, and have resulted in the death of more than ten thousand Filipinos and a very considerable number of American soldiers.

What is the explanation of this strange state of things? The army has now been employed by the President for sixteen months in attempting to reduce the Filipinos to subjection to the authority of the United States by shooting them.

The President cannot claim to have the authority of Congress for causing this great destruction of life as a right of warfare under the law of Nations. No such war has been declared or authorized by Congress, and he does not admit that the Filipinos are even capable of making war or entitled to be treated by the United States as belligerents.

His position, as we understand it, is that these Filipinos are engaged in an insurrection against the lawful authority of the United States, which had been imposed on them by the treaty cession of Spain, after they had been already emancipated from Spanish power as the result of the war with Spain, and that he has been and now is employing the army of the United States to compel them to yield obedience to laws of the United States.

In August last, in a speech at Pittsburg, the President said:—

"The first blow was struck by the insurgents. . . . They assailed our sovereignty ; and there will be no useless parley, no pause, until the insurrection is suppressed."

In a speech at Evanston, Ill., in October last, the President said :—

"The authority of the United States is assailed in one of the islands of the Pacific : that authority will be established in that island."

XIII.

If we correctly understand the position taken by the President in this matter, he is guilty of a plain violation of the laws of the United States in making such a use of the army of the United States in the island of Luzon without the authority of Congress.

Upon the conclusion of the treaty of peace the President ceased to have power to use the army in the Philippine Islands for the purposes of conquest ; and it cannot be pretended that the President in his executive capacity as chief magistrate can consistently with the Constitution and laws of the United States employ the army in putting down an insurrection, real or supposed, in the island of Luzon.

By Section 15 of Chapter 263 of an Act of Congress passed June 18, 1878, it is provided as follows :—

"From and after the passage of this act it shall not be lawful to employ any part of the army of the United States, as a *posse comitatus* or *otherwise*, for the purpose of executing the laws, except in such cases, and under such circumstances, as such employment of said force may be expressly authorized by the Constitution or by act of Congress."

By Section 5334 of U. S. Revised Statutes, rebellion and insurrection against the authority of the United States is made a crime, and is punishable by imprisonment or fine or both. This statute, of course, applies only where courts of the United States exist, and not to persons who have never been subjected to the laws of the United States.

XIV.

These considerations lead us to the conclusion that, when President McKinley found it impossible for him to acquire the Philippine Islands from Spain by conquest, owing to the effect of the protocol of Aug. 12, 1898, he conceived the idea of resorting to the treaty power as a mode of attaining that result through the contract of Spain.

The insurgent Filipinos had already come into possession and control of the island of Luzon by means of war; but Spain was still at liberty to recapture that island from those insurgents, if she had the power to do so, as she had not. If the President could step into the shoes of Spain and use the army of the United States to recover the sovereignty which Spain had lost, and in that way obtain the coveted prize, his end would be gained.

This plan, of course, implied the necessity of dealing perfidiously and treacherously with the Filipinos, who had rendered the most signal services to the United States in its war with Spain. But no such trivial circumstance as that was to be allowed to stand in the way. A more serious difficulty was that of making such an extension of American sovereignty over an unwilling people consistently with the Constitution of the United States, and its provisions for giving certain political rights to all persons under their authority, including, of course, the right of participating in the framing of the laws.

It would not do thus to endow a very large number of ignorant and degraded people with the privilege of making laws and carrying elections for seventy million other people much superior to them in intelligence, character, and condition generally.

This was not to be thought of by any one. Therefore, the treaty with Spain was so framed as to provide that the Constitution should not extend to these seven or eight million people to be thereby added by it to the population of the

United States. In that way this objection was to be removed. The President and Spain adopted that plan for giving to Congress, if that were possible, the power of determining the "civil rights and political status of the inhabitants" of the Philippine Islands, and converting them into citizens of the United States without any regard whatever to their views or wishes in the matter.

XV.

If it be true, as the President claims, that the Philippine Islands had been annexed to the United States by virtue of the contract for that purpose contained in the treaty with Spain, and that he was duly authorized to put ten thousand of the Filipinos to death for refusing to indorse or ratify the bill of sale taken by him from Spain and incorporated in the treaty for conveying them as chattels to the United States, and Congress can be induced by him to adopt that view of the case and act accordingly, he will be very fortunate.

But Congress has not as yet taken that step. Until it does so, we may hope that the people of this country will enjoy the privilege of determining for themselves whether or not a war of subjugation shall continue to be waged in a remote part of the world by the President without the authority of Congress or any legal sanction whatever.

The people will soon have an opportunity to express themselves at the polls upon this vital question.

If they fail in that way to condemn the President's policy of extending the boundaries of the United States by means of conquest and of holding such conquest as a colony, he will perhaps succeed in getting his imperial policy adopted by Congress in December next, and will have engrafted it permanently upon the Constitution; and the Declaration of Independence will have been expunged or limited in its application to the original thirteen States, and we shall no longer have any occasion or reason for celebrating the Fourth of July.

Let us not indulge the expectation that such a disastrous result would be prevented by the Supreme Court.

The mischief would have been already done before the Supreme Court could be called upon to act in the matter; and then the Supreme Court would probably say that the question was a political one, and that, as it had been already decided one way by the executive and legislative departments of the government, it could not be entertained or passed upon by the judiciary.

It, therefore, seems probable that we can avoid the calamity which threatens, only by such a demonstration of opposition to the President's policy at the polls in November next as will prevent Congress from sanctioning it.

NOTE.—In the foregoing we have proceeded on the assumption that the claim of sovereignty over the island of Luzon and its inhabitants rested wholly upon Spain's contract in the treaty of peace, and was, consequently, untenable, because (1) the inhabitants then owed no allegiance to Spain, and (2) that, even if they did, the Constitution would not permit Congress to buy such allegiance.

Now, however, Senator Spooner, in a speech recently made in Congress on this question, takes the position that our alleged sovereignty in the Philippines is based upon conquest rather than upon contract. The President had admitted that our dominion in Luzon, before the treaty, was limited to Manila. In what war, then, was Senator Spooner's supposed "conquest" effected? In a war against the Filipinos? When has Congress authorized such a war? If never, how can such a war have existed?

Is it not true that President McKinley without legal authority has been employing the army in the island of Luzon in making that island the scene of a war of aggression, such as he had once declared to be criminal?

If so, what reason or excuse is there for continuing that war a day longer?

